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SENATE BILL NO. 1415

Offered January 13, 2021

Prefiled January 13, 2021

A BILL to amend and reenact §§ 16.1-253 and 16.1-253.2 of the Code of Virginia, relating to violations of protective orders; preliminary child protective order.

Patron—Stanley

Referred to Committee on the Judiciary

Be it enacted by the General Assembly of Virginia:

- 1. That §§ 16.1-253 and 16.1-253.2 of the Code of Virginia are amended and reenacted as follows:**
§ 16.1-253. Preliminary protective order.

A. Upon the motion of any person or upon the court's own motion, the court may issue a preliminary protective order, after a hearing, if necessary to protect a child's life, health, safety or normal development pending the final determination of any matter before the court. The order may require a child's parents, guardian, legal custodian, other person standing in loco parentis or other family or household member of the child to observe reasonable conditions of behavior for a specified length of time. These conditions shall include any one or more of the following:

1. To abstain from offensive conduct against the child, a family or household member of the child or any person to whom custody of the child is awarded;

2. To cooperate in the provision of reasonable services or programs designed to protect the child's life, health or normal development;

3. To allow persons named by the court to come into the child's home at reasonable times designated by the court to visit the child or inspect the fitness of the home and to determine the physical or emotional health of the child;

4. To allow visitation with the child by persons entitled thereto, as determined by the court;

5. To refrain from acts of commission or omission which tend to endanger the child's life, health or normal development;

6. To refrain from such contact with the child or family or household members of the child, as the court may deem appropriate, including removal of such person from the residence of the child. However, prior to the issuance by the court of an order removing such person from the residence of the child, the petitioner must prove by a preponderance of the evidence that such person's probable future conduct would constitute a danger to the life or health of such child, and that there are no less drastic alternatives which could reasonably and adequately protect the child's life or health pending a final determination on the petition; or

7. To grant the person on whose behalf the order is issued the possession of any companion animal as defined in § 3.2-6500 if such person meets the definition of owner in § 3.2-6500.

B. A preliminary protective order may be issued ex parte upon motion of any person or the court's own motion in any matter before the court, or upon petition. The motion or petition shall be supported by an affidavit or by sworn testimony in person before the judge or intake officer which establishes that the child would be subjected to an imminent threat to life or health to the extent that delay for the provision of an adversary hearing would be likely to result in serious or irreparable injury to the child's life or health. If an ex parte order is issued without an affidavit being presented, the court, in its order, shall state the basis upon which the order was entered, including a summary of the allegations made and the court's findings. Following the issuance of an ex parte order the court shall provide an adversary hearing to the affected parties within the shortest practicable time not to exceed five business days after the issuance of the order.

C. Prior to the hearing required by this section, notice of the hearing shall be given at least 24 hours in advance of the hearing to the guardian ad litem for the child, to the parents, guardian, legal custodian, or other person standing in loco parentis of the child, to any other family or household member of the child to whom the protective order may be directed and to the child if he or she is 12 years of age or older. The notice provided herein shall include (i) the time, date and place for the hearing and (ii) a specific statement of the factual circumstances which allegedly necessitate the issuance of a preliminary protective order.

D. All parties to the hearing shall be informed of their right to counsel pursuant to § 16.1-266.

E. At the hearing the child, his or her parents, guardian, legal custodian or other person standing in loco parentis and any other family or household member of the child to whom notice was given shall have the right to confront and cross-examine all adverse witnesses and evidence and to present evidence

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59 on their own behalf.

60 F. If a petition alleging abuse or neglect of a child has been filed, at the hearing pursuant to this
61 section the court shall determine whether the allegations of abuse or neglect have been proven by a
62 preponderance of the evidence. Any finding of abuse or neglect shall be stated in the court order.
63 However, if, before such a finding is made, a person responsible for the care and custody of the child,
64 the child's guardian ad litem or the local department of social services objects to a finding being made
65 at the hearing, the court shall schedule an adjudicatory hearing to be held within 30 days of the date of
66 the initial preliminary protective order hearing. The adjudicatory hearing shall be held to determine
67 whether the allegations of abuse and neglect have been proven by a preponderance of the evidence.
68 Parties who are present at the hearing shall be given notice of the date set for the adjudicatory hearing
69 and parties who are not present shall be summoned as provided in § 16.1-263. The adjudicatory hearing
70 shall be held and an order may be entered, although a party to the hearing fails to appear and is not
71 represented by counsel, provided personal or substituted service was made on the person, or the court
72 determines that such person cannot be found, after reasonable effort, or in the case of a person who is
73 without the Commonwealth, the person cannot be found or his post office address cannot be ascertained
74 after reasonable effort.

75 Any preliminary protective order issued shall remain in full force and effect pending the adjudicatory
76 hearing.

77 G. If at the preliminary protective order hearing held pursuant to this section the court makes a
78 finding of abuse or neglect and a preliminary protective order is issued, a dispositional hearing shall be
79 held pursuant to § 16.1-278.2. The court shall forthwith, but in all cases no later than the end of the
80 business day on which the order was issued, enter and transfer electronically to the Virginia Criminal
81 Information Network the respondent's identifying information and the name, date of birth, sex, and race
82 of each protected person provided to the court. A copy of the preliminary protective order containing
83 any such identifying information shall be forwarded forthwith to the primary law-enforcement agency
84 responsible for service and entry of protective orders. Upon receipt of the order by the primary
85 law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the
86 identifying information and other appropriate information required by the Department of State Police
87 into the Virginia Criminal Information Network established and maintained by the Department of State
88 Police pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served forthwith on the
89 allegedly abusing person in person as provided in § 16.1-264 and due return made to the court.
90 However, if the order is issued by the circuit court, the clerk of the circuit court shall forthwith forward
91 an attested copy of the order containing the respondent's identifying information and the name, date of
92 birth, sex, and race of each protected person provided to the court to the primary law-enforcement
93 agency providing service and entry of protective orders and upon receipt of the order, the primary
94 law-enforcement agency shall enter the name of the person subject to the order and other appropriate
95 information required by the Department of State Police into the Virginia Criminal Information Network
96 established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and
97 the order shall be served forthwith upon the allegedly abusing person in person as provided in
98 § 16.1-264. Upon service, the agency making service shall enter the date and time of service and other
99 appropriate information required by the Department of State Police into the Virginia Criminal
100 Information Network and make due return to the court. The preliminary order shall specify a date for
101 the dispositional hearing. The dispositional hearing shall be scheduled at the time of the hearing
102 pursuant to this section, and shall be held within 60 days of this hearing. If an adjudicatory hearing is
103 requested pursuant to subsection F, the dispositional hearing shall nonetheless be scheduled at the
104 hearing pursuant to this section. All parties present at the hearing shall be given notice of the date and
105 time scheduled for the dispositional hearing; parties who are not present shall be summoned to appear as
106 provided in § 16.1-263.

107 H. Nothing in this section enables the court to remove a child from the custody of his or her parents,
108 guardian, legal custodian or other person standing in loco parentis, except as provided in § 16.1-278.2,
109 and no order hereunder shall be entered against a person over whom the court does not have
110 jurisdiction.

111 I. Neither a law-enforcement agency, the attorney for the Commonwealth, a court nor the clerk's
112 office, nor any employee of them, may disclose, except among themselves, the residential address,
113 telephone number, or place of employment of the person protected by the order or that of the family of
114 such person, except to the extent that disclosure is (i) required by law or the Rules of the Supreme
115 Court, (ii) necessary for law-enforcement purposes, or (iii) permitted by the court for good cause.

116 J. Violation of any order issued pursuant to this section shall ~~constitute~~ *be punishable as* contempt of
117 court. *However, if the violation involves an act or acts of commission or omission that endangers the*
118 *child's life, health, or normal development or results in bodily injury to the child, it shall be punishable*
119 *as a Class 1 misdemeanor.*

120 K. The court shall forthwith, but in all cases no later than the end of the business day on which the

order was issued, enter and transfer electronically to the Virginia Criminal Information Network the respondent's identifying information and the name, date of birth, sex, and race of each protected person provided to the court. A copy of the preliminary protective order containing any such identifying information shall be forwarded forthwith to the primary law-enforcement agency responsible for service and entry of protective orders. Upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served forthwith on the allegedly abusing person in person as provided in § 16.1-264 and due return made to the court. However, if the order is issued by the circuit court, the clerk of the circuit court shall forthwith forward an attested copy of the order containing the respondent's identifying information and the name, date of birth, sex, and race of each protected person provided to the court to the primary law-enforcement agency providing service and entry of protective orders and upon receipt of the order, the primary law-enforcement agency shall enter the name of the person subject to the order and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served forthwith on the allegedly abusing person in person as provided in § 16.1-264. Upon service, the agency making service shall enter the date and time of service and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network and make due return to the court. The preliminary order shall specify a date for the full hearing.

Upon receipt of the return of service or other proof of service pursuant to subsection C of § 16.1-264, the clerk shall forthwith forward an attested copy of the preliminary protective order to the primary law-enforcement agency and the agency shall forthwith verify and enter any modification as necessary into the Virginia Criminal Information Network as described above. If the order is later dissolved or modified, a copy of the dissolution or modification order shall also be attested, forwarded forthwith to the primary law-enforcement agency responsible for service and entry of protective orders, and upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network as described above and the order shall be served forthwith and due return made to the court.

L. No fee shall be charged for filing or serving any petition or order pursuant to this section.

§ 16.1-253.2. Violation of provisions of protective orders; penalty.

A. In addition to any other penalty provided by law, any person who violates any provision of a protective order issued pursuant to § ~~16.1-253~~, 16.1-253.1, 16.1-253.4, 16.1-278.14, or 16.1-279.1 or subsection B of § 20-103, when such violation involves a provision of the protective order that prohibits such person from (i) going or remaining upon land, buildings, or premises; (ii) further acts of family abuse; or (iii) committing a criminal offense, or which prohibits contacts by the respondent with the allegedly abused person or family or household members of the allegedly abused person as the court deems appropriate, is guilty of a Class 1 misdemeanor. The punishment for any person convicted of a second offense of violating a protective order, when the offense is committed within five years of the prior conviction and when either the instant or prior offense was based on an act or threat of violence, shall include a mandatory minimum term of confinement of 60 days. Any person convicted of a third or subsequent offense of violating a protective order, when the offense is committed within 20 years of the first conviction and when either the instant or one of the prior offenses was based on an act or threat of violence is guilty of a Class 6 felony and the punishment shall include a mandatory minimum term of confinement of six months. The mandatory minimum terms of confinement prescribed for violations of this section shall be served consecutively with any other sentence.

B. In addition to any other penalty provided by law, any person who, while knowingly armed with a firearm or other deadly weapon, violates any provision of a protective order with which he has been served issued pursuant to § ~~16.1-253~~, 16.1-253.1, 16.1-253.4, 16.1-278.14, or 16.1-279.1 or subsection B of § 20-103 is guilty of a Class 6 felony.

C. If the respondent commits an assault and battery upon any party protected by the protective order resulting in bodily injury to the party or stalks any party protected by the protective order in violation of § 18.2-60.3, he is guilty of a Class 6 felony. Any person who violates such a protective order by furtively entering the home of any protected party while the party is present, or by entering and remaining in the home of the protected party until the party arrives, is guilty of a Class 6 felony, in addition to any other penalty provided by law.

D. Upon conviction of any offense hereunder for which a mandatory minimum term of confinement is not specified, the person shall be sentenced to a term of confinement and in no case shall the entire term imposed be suspended. Upon conviction, the court shall, in addition to the sentence imposed, enter

182 a protective order pursuant to § 16.1-279.1 for a specified period not exceeding two years from the date
183 of conviction.
184 E. A violation of this section may be prosecuted in the jurisdiction where the protective order was
185 issued or in any county or city where any act constituting the violation of the protective order occurred.